

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3670 of 1998

to

First Appeal No.3675 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE C.K.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

KIRITBHAI BECHARBHAI PATEL

Appearance:

Mr.K.G.Sheth, AGP, for Petitioners

NOTICE SERVED for Respondent No. 1

UNSERVED-EXPIRED (N) for Respondent No. 2, 3

CORAM : MR.JUSTICE M.H.KADRI

and

MR.JUSTICE C.K.BUCH

Date of decision: 06/04/2000

OMMON ORAL JUDGEMENT (Per: Kadri, J.)

1. Appellants have filed these appeals under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Code of Civil Procedure, 1908, against common judgment and award dated November 29, 1997, rendered by the learned Second Extra Assistant Judge, Kheda, at Nadiad, in Land Reference Cases Nos. 430 of 1987 to 435 of 1987. As common question of facts and law arise for our consideration, we propose to dispose of all these appeals by this common judgment.

2. Agricultural lands of the respondents situated in village Zarola, Taluka Borsad, came to be acquired for public purpose of housing plot for agricultural labourers by issuance of notification under Section 4(1) of the Act, which came to be published in the Government Gazette on June 10, 1982. After following procedure under Section 5A of the Act, declaration under Section 6 of the Act was made which was published in the Government Gazette on January 5, 1984. The Land Acquisition Officer, after serving notices to the respondents, made his award on September 14, 1986, and offered compensation to the claimants at the rate of Rs.250/- per Are for the acquired lands. The respondents were of the opinion that the compensation offered by the Land Acquisition Officer was inadequate. Therefore, they submitted applications in writing under Section 18 of the Act requiring the Land Acquisition Officer to refer the applications to the Court for determination of adequate compensation. Accordingly, references were made to the District Court, Kheda, which were numbered as Land Reference Cases Nos. 430 of 1987 to 435 of 1987.

3. The respondents, before the Reference Court, did not examine any witness, but produced extracts of 7/12 forms of acquired lands. The claimants also produced previous award at Exh.19, which was in respect of agricultural lands of same village which were temporarily acquired by ONGC, Khambat Project, in the year 1981. The Reference Court, in the award Exh.19, had awarded compensation to the claimants at the rate of Rs.190/- per Are per year as rent of acquired lands. The Reference Court mainly relied upon said award Exh.19 which was in respect of acquired lands of village Zarola, which were temporarily acquired, for the purpose of determining market value of present acquired lands at the rate of Rs.15.20 per Are, which is questioned by the appellants by filing these appeals.

4. In reference filed under Section 18 of the Act, the claimants are in a position of plaintiffs and they

have to lead convincing evidence for the purpose of determination of market value of acquired lands. Supreme Court, in the case of Kanwar Singh and Others v/s Union of India, JT 1998(7) SC 397, has observed that it is the duty of the claimant to prove that acquired lands of previous award were having same fertility and were similarly situated and that claimant had to lead evidence to prove the previous award and in case, claimant had not led sufficient evidence with regard to the previous award, no reliance can be placed on the previous award for determination of the market value of the acquired lands. The relevant observations made by the Supreme Court in para-8 of the aforesaid decision are as under :-

" The claimants have to prove and demonstrate that the compensation offered by the Collector is not adequate and the same does not reflect the true market value of the land on the date of notification under Section 4 of the Act. This could only be done by the claimants by adducing evidence to the effect that on the relevant date, the market value of the land in question was such at which the vendor and the vendee (buyer and seller) were willing to sell or purchase the land. The consideration in terms of price received for land under bona fide transactions on the date or preceding the date of notification issued under Section 4 of the Act generally shows the market value of the acquired land and the market value of the acquired land to be assessed in terms of those transactions. Sale instances showing the price fetched for similar land with similar advantages under bonafide transaction of sale at or near about the issue of notification under Section 4 of the Act is well recognized to be the appropriate evidence for determining the market value of the acquired land."

5. The Reference Court, in absence of evidence, had determined the market value of the acquired lands which is contrary to the pronouncement of the Supreme Court in Kanwar Singh's case (supra). Therefore, we are left with no other alternative but to remand the matter to the Reference Court for determination of the market value of the acquired lands. Reference Court shall give opportunity to the claimants as well as to the opponents for leading evidence for determination of the market value of the present acquired lands situated at village Zarola. Reference Court shall dispose of reference applications as expeditiously as possible preferably within six months from the date of receipt of this

judgment.

6. As a result of foregoing discussion, common judgment and award dated November 29, 1997, rendered by the learned Second Extra Assistant Judge, Kheda, at Nadiad, in Land Reference Cases Nos. 430 of 1987 to 435 of 1987 is hereby quashed and set aside. These appeals are allowed. Reference Applications are being remanded back to the Reference Court to be tried in accordance with law. Office is directed to send back R & P to the Reference Court forthwith along with copy of this common judgment. No order as to costs.

(swamy)